

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6157

THADDEUS LOCKHART,

Petitioner - Appellant,

versus

STATE OF SOUTH CAROLINA; HENRY MCMASTER,

Respondents - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Florence. David C. Norton, District Judge. (CA-03-0678-04-18BH)

Submitted: September 17, 2004 Decided: September 29, 2004

Before KING and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed in part; dismissed in part by unpublished per curiam opinion.

Thaddeus Lockhart, Appellant Pro Se. Donald John Zelenka, Chief Deputy Attorney General, Melody Jane Brown, OFFICE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Thaddeus Lockhart, a South Carolina prisoner, appeals the district court's order accepting the recommendation of the magistrate judge and denying his 28 U.S.C. § 2254 (2000) petition as untimely under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA").

The district court granted a certificate of appealability with respect to Lockhart's claim that the district court erred in finding that his petition was untimely under the AEDPA. We have reviewed the record and find that the district court correctly concluded that Lockhart's petition was untimely filed. Accordingly, we affirm the district court's findings on this issue on the reasoning of the district court. See Lockhart v. South Carolina, No. CA-03-0678-04-18BH (D.S.C. filed Nov. 21, 2003 & entered Nov. 24, 2003).

The district court declined to issue a certificate of appealability on Lockhart's remaining claims. In these claims, he contends that the district court erred in granting summary judgment to the Respondents on procedural grounds without considering the underlying merits of his petition and contends that the district court erroneously failed to resolve a discovery dispute. Lockhart cannot obtain a certificate of appealability as to these claims absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this

standard by demonstrating that reasonable jurists would find both that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Lockhart has not made the requisite showing. Accordingly, we deny Lockhart's motion for a certificate of appealability as to his remaining claims and dismiss the appeal as to these claims.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART;
DISMISSED IN PART